

**IN THE HIGH COURT OF BOMBAY AT GOA**  
**COMPANY APPLICATION NO. 107 OF 2001**

Official Liquidator  
High Court of Bombay  
Panaji.

... Applicant

versus

Babunath R. Goswami  
and others.

... Respondents

Ms. Amira Razak, Advocate for the Applicant/Official Liquidator.

Mr. J. P. Mulgaonkar, Advocate for the Respondent No.1.

**CORAM : N. A. BRITTO, J.**

**DATE : 23RD JUNE, 2006.**

**ORAL ORDER**

Heard Ms. Amira Razak, the learned Counsel on behalf of the applicant/Official Liquidator and Mr. J. P. Mulgaonkar, the learned Counsel on behalf of the respondent no.1.

2. This is a claim application to recover a sum of

Rs.1,39,919/- due by the respondents on account of a loan of Rs.75,000/- availed of by respondent no.1 on 15-2-1996 and 22-4-1996 with respondent nos.2 and 3 standing as sureties. The said loan was taken from the Company which went into liquidation. The respondent no.1 contested the proceedings while respondent nos.2 and 3 chose to remain absent. The plea of respondent no.1 was that he had a fixed deposit receipt of Rs.12,000/- with the said Company and besides respondent no.1 was making regular pigmy deposits with the said Company. Moreover, his brothers Prakash Goswami and Kailashnath Goswami were also holding pigmy deposits. As per respondent no.1 he had with the Company as on 1-10-1998 a sum of Rs.80,000/-. Respondent No.1 further stated that in case further amount was due by him he may be given opportunity to pay the same by monthly instalments of Rs.1000/-.

3. The Official Liquidator filed his affidavit in evidence and produced the necessary documents in support of his claim. The respondent no.1 too filed his affidavit in evidence and admitted that he had taken a loan of Rs.75,000/- from the said Company but stated that he had issued a notice to the Company

on 1-10-1998 asking for an extract of the account to enable him to know the exact account which was not furnished to him. He also stated that he had a fixed deposit with the said Company in the sum of Rs.12,000/- and besides he and his brothers Prakash Goswami and Kailashnath Goswami were regularly depositing amounts in the pigmy accounts. He further stated that he had made a deposit of Rs.97,600/- with the said Company. However, in cross-examination he admitted that he did not have any receipt for the said amount of Rs.12,000/- as his shop was burnt. Likewise, he admitted that he did not have any receipts to show that his brothers Prakash Goswami and Kailashnath Goswami had pigmy accounts with the Company inasmuch as he was also unable to give the numbers of the said pigmy accounts. He was also unable to produce the receipt for Rs.97,600/- and merely stated that he had given the said receipt to the said Company. He denied the suggestion that he had paid only Rs.46,875/- and when it was pointed out to him that he had paid the last installment of Rs.1,600/- on 31-8-1998 he avoided a direct answer to the same.

4. The Official Liquidator amongst the several

documents produced has also produced the loan ledger of the Company which shows at the foot of the account a sum of Rs.98,696.20. In case any deposits were made by respondent no.1 or were adjusted, the same would have certainly been reflected in the said loan ledger. It is very convenient to say that no documents can be produced because the shop was burnt. In the absence of any documents produced by respondent no.1, his claim that he paid any amount, other than those reflected on the loan ledger, cannot be accepted. The version of the applicant/Official Liquidator is supported by the documents produced from the Company in his hands. Consequently, the claim is bound to succeed. As a result, the respondents are hereby directed to pay to the applicant/Official Liquidator jointly and severally a sum of Rs.1,39,919/- with pending interest at the rate of 20% and at the rate of 6% from the date of this decree until payment, with costs. Claim Application disposed of.

**N. A. BRITTO, J.**

**RD**